International Economic Issues

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Editor's Introduction
by Murray G. Smith

The Future of the World Trading System
by Jack H. Warren and Frank Stone

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by H. Edward English

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by Jean-François Bence

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EDITOR'S INTRODUCTION

Murray G. Smith

The world's trading system is approaching a crucial juncture. During the 1980s a series of regional trade initiatives with broad implications for global commerce have been launched. At the same time the Uruguay Round is moving toward its scheduled conclusion at the end of 1990.

Here in North America the Canada-US FTA was negotiated in 1986-1987 and implementation commenced in January 1989. Now Mexico is exploring the possibility of negotiating a free trade agreement with the United States analogous to the Canada-US FTA which could also involve Canada.

In Europe the twelve member states of the European Community have intensified their efforts to build on the Treaty of Rome and their common institutions that they have in place to truly create a single integrated market by the end of 1992. The European Community also is committed to strengthening its economic relations with the member countries of the European Free Trade Association (EFTA) with whom it has a series of bilateral free trade agreements. With the sudden collapse of the Iron Curtain, the European Community now faces a new challenge in its relationships with the former East Block socialistic economy and with the Soviet Union itself.

In the Asia Pacific region, economic integration is proceeding through market mechanisms. Expansion of trade and investment is occurring because of the dynamism of the economies and their outward looking commercial policy regimes, but it is not as yet been facilitated by any regional institutional or trading arrangement, with the exception of ASEAN (the Association of South East Asian Nations).

The first contribution to this issue by Warren and Stone examines the crucial role of the GATT multilateral system and the significance of the outcome of the Uruguay Round for structuring trade and economic interactions among these dynamic regional trading initiatives. The real test of a regional trading arrangement is whether it is prepared — either collectively in the case of common markets or separately in the case of partners in free trade agreements — to negotiate reciprocal multilateral liberalization.

The second contribution by H. Edward English examines recent proposals for Pacific Economic Cooperation. He makes clear that these Pacific initiatives have a quite different focus than regional trading initiatives and are aimed at promoting policy dialogue among the participants and ensuring that the multilateral trading system is sustained. Of course, the question will remain about how these Pacific countries may respond to developments after the Uruguay Round.

The third contribution by Jean François Bence examines the European Communities' efforts to complete the internal market by 1992. Bence focuses on the possible implications for third countries of the European Communities' initiative. The external dimensions of the 1992 agenda was ignored in early European discussions of its own initiative which gave rise to considerable uncertainty among Europe's trading partners. The cry of Fortress Europe was raised by many. Yet the successful completion of Europe 1992 could yield benefits not only to Europe but to global commerce. Many of the uncertainties upon the external implications of the Europe's 1992 agenda could be resolved through successful completion of the Uruguay Round.

Clearly, successful outcome to the Uruguay Round will determine to a considerable degree whether these regional trading initiatives are benign for global trade and commerce.

THE FUTURE OF THE WORLD TRADING SYSTEM[*]

Jack H. Warren
Frank Stone

During the 1970s and especially during the 1980s the pace of world economic change greatly quickened. One outstanding feature has been the growing interdependence of national economies. Today, developments in one area are quickly and sometimes instantaneously reflected elsewhere. The foreign exchange computers never sleep. Indeed technological and information revolutions have changed the very nature of doing business, whether the production and sale of goods or the offering of services. The institutional and regulatory frameworks within which national and international business are conducted have converged but still have a long way to go in adjusting to these and many other new developments, including significant alterations in comparative advantage.

Since the recession of 1982-83, industrialized countries have had to adjust to new competitive challenges in domestic and foreign markets, but the necessary adaptation has been cushioned by a welcome, if somewhat surprising, six years of sustained economic growth. Now the warning signals of rising inflationary pressures are flying in many countries, and in a number of them the capacity to cope with such pressures is limited by past and present lack of fiscal discipline.

A number of developing countries have made impressive economic progress in recent years — especially the newly industrialized economies; others are embarking on substantial, more market-oriented, reforms. But many developing countries in Latin America and Africa face continuing economic difficulties flowing from adverse terms of trade, heavy indebtedness, internal mismanagement, inflation, and failure to adjust to domestic economic imperatives and new global realities. In 1988 there was again a net outflow of capital from developing countries in Latin America, Asia and Africa. In quite a number of developing countries, austerity and other domestic reform programs are creating severe social problems and political instability.

Changing patterns of comparative advantage have given rise to a variety of tensions in international trade relations. Protectionist pressures have risen, particularly in the United States and other deficit countries, but also in surplus countries where particular industries and their work forces have reacted strongly to new sources of competition in their markets.

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[*] This presentation by Jack H. Warren, prepared with Frank Stone and Murray G. Smith was made to the 1989 Quadrangular Forum in Brussels, Belgium 31 March to 2 April 1989. Thus, the statement was made prior to the key meeting of the Trade Negotiating Committee for the Uruguay Round in April 1989. However, the issues raised remain very relevant to the completion of the Uruguay Round.

The phenomenon of managed trade, where natural flows of trade are distorted by unilateral, bilateral or plurilateral governmental intervention, has grown apace. Many of these arrangements have been inconsistent with the letter and the spirit of the rules of non-discriminatory liberal trade enshrined in the GATT.

The problems that have arisen in agricultural trade have had different origins, rooted as they are in the protection and support of domestic agricultural producers; this has resulted in trade distortion and frustration of the export prospects of more naturally efficient producers. These effects have now been made even more severe by intense subsidized export competition, particularly between the European Community and the United States. Improved world prices for several commodities, reflecting drought and other production-limiting factors in a number of countries, have somewhat eased the situation in terms of producer income and budgetary costs to governments; but they have by no means ameliorated the underlying distortions of agricultural production and trade.

It is noteworthy, despite the current litany of trade problems, that the volume of world trade has been growing strongly and over a considerable period. Accordingly to the most recent GATT report, merchandise trade rose in volume by a record 8.5 per cent last year. This increase equals the previous record set in the boom year of 1984 and represents the fourth consecutive year of accelerating trade growth. This trend is expected to continue throughout the current year. Particularly important is the fact that for the last six years international trade has grown more rapidly than world production. Thus international trade, together with business investment, has been a key engine of economic growth over the period.

Of course, it was not because of the satisfactory growth of international commerce that GATT members, six years after completing the Tokyo Round, declared in 1986 that the time had come once again to convene around the negotiating table. Rather it was because of fear that the multilateral trading system, so carefully constructed over the decades since 1948 but so much taken for granted, might indeed be cracking under the strain. Protectionism was on the increase. Trade restraints outside GATT were becoming the rule whenever structural competitive problems came to the fore. The universal disciplines of GATT, fashioned as they were after the Second World War by only a clutch of industrialized countries, were no longer seen as adequately responsive to the needs of the much larger and diverse range of countries that had become GATT members or were willing de facto to operate within the GATT system. There was also a feeling that as the central trade entity, GATT was in need of institutional change to permit it to have greater influence over its members. It was also the view that, because of the important place of trade in international macro-economic adjustments, GATT should play a larger role in the deliberations about such matters, more akin to that being played by the IMF and IBRD. Last but not least, there was a concern that GATT's mandate, focused chiefly on the exchange of goods, was failing to meet the need for international discipline in other areas of commerce, notably services. Pressure had also grown for better rules with respect to intellectual property protection as it might affect trade and as regards certain investment policies and practices that could adversely affect normal trade patterns.

This range of problems did not appear overnight, of course, but over time and collectively they had eroded confidence in GATT's competence and its potential to cope with contemporary trade issues. This gave rise to the consideration of alternative arrangements, bilateral or regional, with protective and inward-looking overtones.

A widely publicized meeting in Geneva in 1982 of Trade Ministers from GATT countries broke up in evident disarray and did little to restore confidence in the multilateral system. But this meeting set in train a fresh program of work that pointed toward a stronger and more effective GATT and another collective effort to head off protectionism by a new worldwide effort at trade liberalization. A powerful further boost to maintenance of the multilateral trade system was given in 1984 by a group of eminent personalities appointed by the GATT Director General, headed by Fritz Leutwiler of Switzerland, to analyze the main problems that had emerged and to make recommendations for correcting them. One of the recommendations in the Leutwiler Report was to open an early, new, comprehensive round of multilateral trade negotiations. Many of the recommendations in this Report in fact found their way, mutadis mutandis, into the 1986 Punta del Este Declaration, which launched the Uruguay Round.

The Uruguay Round

The Uruguay Round is the latest and eighth round of multilateral negotiations under GATT since its beginning in 1947. It is also perhaps the most ambitious and involves the greatest number of active participants — more than 100 countries in all. The agenda set out in the Punta del Este Declaration, which was drawn up and agreed to with considerable difficulty by the trade ministers from participating countries, represents an impressive catalogue of the challenges facing the world trading system. No fewer than fifteen issues were identified, and objectives for negotiations on each of them were agreed, although the compromise language papers over major continuing differences.

The scope and nature of the Uruguay Round can be summarized as follows:

- First, the further liberalization of world trade. This would involve further reductions in tariffs and other trade barriers not only by the larger trading countries but also by the more advanced developing countries. Other improvements in access to world markets were envisaged, including the phasing out of restrictions under the Multifibre Arrangements, and a reduction in what are called "escalating" tariffs on processed raw materials, which are designed to protect processing industries in importing countries. A primary objective of many developing countries was the elimination of tariff and other barriers to exports of tropical products, and in the course of the Uruguay Round to date, reductions in a number of these barriers have already been promised by some industrial countries.

- Second, the Round envisaged the negotiation of a new, more liberal regime for agricultural production and trade. This would involve stronger disciplines governing import access and export competition; trade liberalization through the reduction of import barriers; and the elimination so far as possible of the trade-distorting effects

of health and phytosanitary regulations. More important, the Ministers agreed that the negotiations should address the whole issue of agricultural subsidization. I will cite the relevant paragraph of the Declaration because the undertakings were quite radical. For the first time the negotiations could touch domestic subsidies and therefore long-standing domestic farm support programs, in many countries. The relevant paragraphs read as follows:

> Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations, by:
>
> (i) improving market access through, inter alia, the reduction of import barriers
>
> (ii) improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;
>
> (iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements.

- A third major objective was to improve GATT trade rules generally. Improved rules for the use of "safeguard measures" had, of course, been under discussion for a long time previously but had resisted resolution. These are restrictive measures that countries may adopt under certain conditions, when increased imports threaten serious injury to domestic producers. It is hoped finally to reconcile differing views on how safeguard measures may be applied under the relevant GATT provision (Article XIX) and particularly the vexed issue of "selective" or non-discriminatory application. Such a resolution would bring under GATT disciplines a range of "grey area" trade restrictions, such as voluntary export quotes, which have proliferated outside the GATT framework.

  Improvements are also widely recognized as needed in the rules governing trade-distorting subsidies and dumping, and to govern the use of countervailing and antidumping duties. Other GATT rules under discussion include those governing restrictions imposed for balance-of-payments reasons, state trading, and the operation of customs unions and free trade areas.

- One of the most controversial issues at Punta del Este was the inclusion in the Uruguay Round of proposals to extend GATT rules into the "new" issues of trade in services and the trade-related aspects of intellectual property (TRIPS) and investment

measures (TRIMS). The Punta del Este Declaration set out the objectives of negotiations in these areas in terms that reflected these divided views.

- Regarding **trade in services**, the negotiations are to aim at establishing a multilateral framework of principles and rules and are to include the elaboration of possible disciplines for individual sectors. The negotiations are aimed, as well, at the expansion of trade in services under conditions of transparency and progressive liberalization, while respecting the policy objectives of national laws and regulations and taking account of the work of relevant international organizations, such as the World Intellectual Property Organization.

- The objectives of the negotiations on the **trade-related aspects of intellectual property** are somewhat ambiguous, but are aimed at reducing distortions and impediments to international trade, clarifying GATT provisions relating to intellectual property, and elaborating, as appropriate, new rules and disciplines. While the negotiations are to take account of the need to promote effective and adequate protection of intellectual property rights, they also recognize the need to ensure that measures and procedures to enforce intellectual property rights do no themselves become barriers to international trade. Negotiations in this area are aimed as well at developing a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods.

- The negotiations on **trade-related investment measures** will first of all examine the operation of GATT articles related to the trade-restrictive and -distorting effects of investment measures, and then are to elaborate, as appropriate, further provisions as may be necessary to avoid such adverse effects on trade.

- Finally, a principal objective of the Uruguay Round was to strengthen the institutional elements of GATT. It seems generally accepted that GATT should now be equipped to play a more effective role in the monitoring and supervision of the national trade policies of member countries. It also seems accepted that the GATT rules and procedures for dispute resolution should be improved and that more regular, frequent meetings at the ministerial level are needed to strengthen the political underpinnings of the system. Also, there is little disagreement on the need for more effective involvement by GATT with the international financial and lending bodies, especially the International Monetary Fund and the World Bank, in the consideration of international macro-economic policies. These institutional changes, if adopted, would fundamentally improve the whole system for international co-operation in economic and trade areas.

Montreal Ministerial Meeting

The Uruguay Round may appear to have progressed rather slowly, especially given the apparent set-back at the Mid-Term Ministerial Meeting in Montreal in December 1988.

But appearances can be deceptive, and the trading world must hope that the Montreal pause was not a foretaste of failure but rather a chance to digest reality and catch breath before entering the tough world of actual negotiations.

To put the Montreal result into perspective, it is perhaps useful to recall that it took three years or more from its launching in 1973 to get the Tokyo Round of trade negotiations truly off the ground. And the Tokyo Round, although it made a good start at dealing with a number of non-tariff barriers, had a relatively simple negotiating agenda compared with the complex and comprehensive menu that the Uruguay Round negotiators are called upon to address. In this regard I refer not only to the new issues — trade in services, the trade-related aspects of intellectual property, and trade-related investment measures. It is equally important to remember that the Uruguay Round is the inheritor of all the unresolved trade issues left over from the Tokyo Round or that have emerged in the subsequent period. Just to list some of these problems gives a measure of the difficulties involved: agriculture, textiles, safeguards, subsidies and countervailing duties, the "graduation" of the less developed countries, and the possible membership of China and perhaps later the Soviet Union.

In the light of such a series of important and in many cases so far intractable challenges, it would be easy to draw pessimistic conclusions about the stand-off in Montreal and about the prospects for successful conclusion of the negotiations as a whole. Such conclusions would in my view be incorrect, or at least premature.

What about Montreal? There was both bad news and good news. The bad news was that Trade Ministers could not agree on how to launch and conduct negotiations on such important issues as agriculture, TRIPS, textiles and safeguards. The good news was that remarkable progress was registered on ten or eleven of the other issues under negotiation in the Round. The Geneva negotiations could have moved forward on this broad range of subjects had it not been that the negotiations as a whole were put on hold. On this more positive side of the ledger I would note tentative agreement on the liberalization of trade in tropical products and on a revised and strengthened dispute settlement procedure to provide more timely and effective disposition of differences between member countries; agreement on a stronger institutional role for the GATT, including the regular surveillance of member countries' trade policies; greater and more regular ministerial involvement in GATT; and agreement to strengthen the role and capacity of the GATT Secretariat. Of particular significance was the agreement of the participants to go ahead with negotiation for a framework of an agreement on services that would embody the GATT principles of non-discrimination, national treatment and progressive market liberalization in particular sectors. Finally and most important, broad agreement was reached on reducing obstacles to access to markets by further cuts in tariffs and non-tariff barriers throughout the trade system, including barriers to imports by the more advanced developing countries.

I am not sure if one were able to reset the Uruguay Round timetable whether it would be wise again to include a high profile Ministerial Mid-Term review. The high expectations that such meetings can generate carry the associated dangers of political and media let-down when exaggerated expectations cannot be realized. Inevitably, in most major trade negotiations the key participants are unwilling to play their high cards until just

before the end of the game, when all the chips are on the table and the costs and benefits of final trade-offs can be reasonably measured. From this point of view some of the "early harvest" objectives that some countries entertained for Montreal may have been unrealistic from the beginning.

But the fact that Ministers had actually to confront the heart of several of the key issues may have been salutary in at least determining where common ground and consensus were unlikely to be found. And the crisis, one may hope, will have moved the political leadership in the key countries to examine the room for manoeuvre that needs to be explored if they are to avoid being tagged with the blame for failure of one of the key international negotiations of our time. In such consideration, it should be realized that the Uruguay Round could easily mark a crossroads in international economic co-operation, at a moment in history when the globalization of business almost makes imperative the establishment of a better, more stable and comprehensive framework for trade and commerce worldwide.

The Geneva TNC Meeting

In Geneva next week the senior level committee that manages the Uruguay Round negotiation is scheduled to resume its deliberations, following the Montreal impasse, in Geneva in April 1989. We shall know then whether Director General Dunkel's confidential consultations with the key players on the four outstanding issues have been successful in finding the degree of consensus necessary to permit the negotiation as a whole to move ahead.

If the log jam is to be broken it will be necessary for the United States and the European Community to reconcile their differences over long-term objectives in the critical area of agriculture. This is not the occasion to enter into a detailed discussion of the agricultural negotiations. But it seems clear that any agreement would have to involve commitment to the substantial reduction over time of agricultural protectionism, including agricultural subsidization, especially but not exclusively in export markets. A genuine liberalization of agricultural markets must also be envisaged.

If something along these lines can be agreed for agriculture, I believe the three other problem areas will prove negotiable, although each of these subjects has its own inherent difficulties. In such more promising circumstances, the attitudes of leading LDCs, especially certain of the Latin American countries and perhaps also India, could become more flexible as regards GATT's role not only in enforcing intellectual property rights in cases of trade distortion but also in complementing the work of other organization like the World Intellectual Property Organization in improving and actually developing standards for the protection of proprietary rights where present arrangements are inadequate or, in certain new fields, non-existent.

I do not expect final resolution of the central issues of the negotiation with respect to textiles and emergency safeguards to be achieved next week in Geneva. I expect, however, that if ways are found to permit the agricultural and intellectual property rights

negotiations to move forward, enough common ground will be found at least to establish an agreed course ahead for textiles and safeguards.

The role being played by developing countries in the Uruguay Round is worthy of special mention. No longer is it the case that the key deals are struck by the industrialized countries, led by the United States, the European Community and Japan, with the developing countries playing only a marginal role and eventually brought along via "special and differential treatment". Now the industrialized countries are looking for genuine commitments from the developing countries both as regards access to their markets and in terms of commitments with respect to services, intellectual property and investment. This means that the industrialized countries, for their part, must take more seriously the demands of developing countries for concessions in their markets, as for example for tropical products, agriculture and textiles. This time, older and often unproductive divisions in GATT between industrial and developing countries are disappearing, as many developing countries have come to a new appreciation of their stake in maintaining and strengthening the GATT system, and as new coalitions have emerged among groups of developing and industrial countries in the pursuit of various objectives in the Uruguay Round. Remember that it was a group of developing countries, led by the Latin Americans, that made it clear in Montreal that the negotiations as a whole could not proceed until the major players found it possible to permit forward movement in the agricultural negotiations.

All of us who value the benefits that the multilateral trade system has brought to each participant must hope that next week's meetings in Geneva are successful and that the Uruguay Round itself is brought to a fruitful conclusion over the next two years — or whatever further period it may take to bring them to finality. The cost of failure would be high, and in my view no country or grouping, however large, could escape paying the price.

It is now more than 40 years since the General Agreement on Tariffs and Trade was put into place in a bold effort to construct a multilateral system based on non-discrimination and the rule of law, to replace the discredited network of bilateral agreements and autarchic national policies of the pre-war years. This multilateral system has survived and been enlarged beyond the expectations of its architects. Membership in GATT has increased from the original 23 countries to almost 100. Tariffs and other barriers to trade have been greatly reduced; United States tariffs, for example, have been cut from an average of around 30 per cent in 1947 to around 5 or 6 per cent today. The GATT system has made a major contribution to the enormous growth of the world economy over the post-war period although, admittedly, the benefits of the system have been distributed unevenly.

A Test for the Multilateral System

The Uruguay Round is a test of whether this multilateral system will survive and grow. If it fails, we may have to face a trading world dominated by major economic blocs and bilateral arrangements, where discrimination rather than most-favoured-nation arrangements could become the order of the day, with accompanying tensions between trading countries and a diminution of trade's contribute to growth. If the Uruguay Round succeeds, we may

look forward to the further dismantling of barriers to world trade, to improved and extended rules for global commerce, and to closer international co-operation in the management of the system. We will also have a better prospect that the advantages of international trade will be spread more evenly among all parts of the world to the benefit of all.

Even within the framework of the existing arrangement, concerns have been expressed that the multilateral trade system centred on GATT will be or is being weakened by emergence of new regional trade groups and the strengthening of existing regional trade arrangements in Western Europe. This need not be so.

The GATT system from the beginning was designed to accommodate regional trade arrangements, provided these conformed to the conditions set out in Article XXIV. One condition was that these arrangements must allow the free movement of substantially all the trade within the regional market and should not be a simple exchange of trade preferences in selected sectors. Another was that the arrangements should not create new barriers to trade with outside countries. Acceptable regional trade arrangements should be "trade-creating", not "trade-diverting". That is the test, not whether regional groupings exist or are created.

The recently concluded Free Trade Agreement between Canada and the United States was carefully designed to conform to the GATT rules. In both countries, and certainly in Canada, the Agreement is seen not as detracting from the multilateral trade system, but rather as contributing new momentum to it; and in various ways the Agreement can provide models for possible new arrangements that could be developed on a multilateral basis in the Uruguay Round. The new Agreement does not replace GATT, which remains in force between the two countries and which is incorporated by reference in many articles of the bilateral Agreement. The Agreement, however, complements the GATT and extends the liberalization of commerce between the two countries in ways consistent with GATT principles of non-discrimination and national treatment between the parties.

Of interest in the Agreement, in terms of the current multilateral trade negotiations, are the innovative provisions covering trade in services and investment. The special provisions on dispute resolution, which include review by a binational panel of national antidumping and countervailing duty rulings for conformity with relevant national laws, have also attracted a great deal of attention. In accordance with GATT practice, the Canada/United States Agreement will be examined in detail in the near future by a GATT working party. Both Canada and the United States look forward to discussing its terms with fellow contracting parties.

As members of a free trade area (as distinct from a customs union) both Canada and the United States retain full independence and control of their global economic and trade policies and their trade and relations with outside countries; and they maintain, of course, their separate, independent membership in GATT. There is no evidence that the Free Trade Agreement has dampened the support of either country for the multilateral GATT system, as witnessed by their leadership and active participation in the current Round.

I am aware of current discussions of possible forms of co-operative arrangements in economic and trade areas among countries of the Pacific and East Asia region. Because of the economic diversity of the countries in the region, I doubt that any broad free trade agreement or common market is likely to emerge among all these countries over the foreseeable future. A more likely development would be the creation of some new arrangements for consultations on trade and economic matters among countries of the area. There have also been suggestions, mainly in academic circles, for free trade arrangements between the United States and Japan, or with other countries. For the reasons I have just cited, and knowing the kind of difficulties that had to be overcome in the Canada/United States negotiations, I am sceptical that such agreements are in prospect, unless, perhaps, the Uruguay Round were to fail and the GATT system were to be abandoned.

Outside countries are following with more attention and some concern the proposals to complete arrangements for the free movement of goods and services within the European Community by 1992. The precise nature of the arrangements is still far from clear in a number of important areas. But it is evident that within the Community there are conflicting views about the objectives for 1992, and that, in some sectors, there are pressures for arrangements that could embody inward-looking, protectionist approaches. It will, of course, be the hope of outside countries like Canada that the final form of the new arrangements in Europe will, so far as goods are concerned, be fully consistent with GATT; it is hoped also that the harmonized or integrated European arrangements for services, standards, public procurement and the like will not raise new barriers to commerce with non-member countries, but will instead stimulate exchanges and investment with the outside world. Perhaps a successful outcome of the Uruguay Round will help to establish a framework for trade in services, which will facilitate the reconciliation of internal European progress with the imperatives of an ever more interdependent global economy.

I am a strong multilateralist. But in my view such a dedication need not exclude the development of "benign" regional groupings which, while promoting internal liberalization, continue also to give priority to mutual reductions of tariff and non-tariff barriers to trade with third countries and to the liberalization of international trade in services. This tolerance for regionalism would not, of course, extend to inward-looking protective groupings that sought to maintain internal economic activity at the expense of foreign countries and that created rather than diminished barriers to external commerce.

I would be worried also about the application of "reciprocity" in trade policy as the term has recently come to be used in certain quarters. In earlier days "reciprocity" was associated with the mutual lowering of tariff barriers to trade. But in the United States, where the term was invented, there has been a sort of linguistic transition through the notion of "a level playing field" to a meaning that suggests that reciprocity and equity are not achieved until the other fellow's garden is the mirror image of your own. One has only to consider the diversity of our respective economic heritages to realize how complicated and impractical the general application of such a concept would be. Indeed it could only be practised by the larger and more powerful at the expense of weaker countries. The older concept of shared liberalization of commerce on a mutually acceptable basis would seem greatly to be preferred. This again emphasizes the importance of a substantial

outcome to the Uruguay Round, not least in the new areas of services, intellectual property, and investment.

For better or for worse we are increasingly a part of Marshall McLuhan's global village, and our institutions must reflect this growing reality. We need a better framework for trade and other business in foreign as well as domestic markets. We need the certainty of agreed rules and procedures for dispute settlement, and we need to enhance the well-being of our populations through improved functioning of the multilateral trade and payment systems.

This closer working together, this improved framework, need not imply across-the-board homogeneity. It would, however, require dedication to key principles such as non-discrimination, most-favoured-nation, and national treatment, as well as to their progressive application over a wider and wider area of trade and commerce. The GATT, even as it is now constituted, is an excellent example of what I have in mind. All members subscribe to these principles and associated general obligations. But there are exceptions permitted for free trade areas and common markets. The developing countries enjoy special and differential treatment, although some of those are now moving, or should be moving, to a fuller acceptance of GATT responsibilities. The conditional most-favoured-nation nature of a number of the Tokyo Round Codes is a recognition that at a given time not all countries are able to accept the same responsibilities. Special arrangements have had to be devised and will continue to be needed where associate or full membership in the GATT is sought by trading countries.

The GATT has evolved and continues to evolve in ways that, while maintaining desired direction, take account of realities and of the need sometimes to move incrementally to its established goals. Thus the GATT already embodies considerable diversity and differentiation — within, however, an agreed framework.

We do not hear so much these days about the high priests of GATT, but there are parallels between the Church and the work of the Contracting Parties. The structure has been buttressed by experience and tested over many years. The Articles have been set down, and a declaration of faith in the multilateral system is a basic condition of membership. The number of practitioners has increased steadily, and previous non-believers from Eastern Europe and the Orient are knocking at the door. The GATT parishioners, while professing the faith, are not all of equal virtue, and the structure has found the flexibility to forgive much variation in practices and rituals. More and more one can say also of the GATT — "in my House are many mansions".

If GATT were not there, a forum for world trade management and co-operation would surely have shortly to be reinvented. In the interim the breakdown of the existing system would as I have said, be costly for all concerned.

If on the economic side there is to be a clear and immediate message from this Quadrangular Forum, it should be to each of our governments to ensure that consensus be found next week in Geneva and that the critical Uruguay negotiation be relaunched and move ahead.

The message to our Summit leaders should be equally clear. The necessary momentum must be maintained to ensure that the post-Geneva phase of the negotiations is carried forward with priority and purpose, to yield the envisaged benefits so urgently needed in the volatile and precarious trading world of today.

The Uruguay Round is a major turning point in international economic cooperation. It comes at a moment in history when the globalization of business makes imperative the establishment of a better, more stable and comprehensive framework for trade and commerce, world-wide. All need this framework — the industrial countries, the developing countries, and progressively, what at this stage are still state-trading economies. The industrial countries need a revitalized and more comprehensive system to help achieve their goals of greater efficiency and competitiveness. For the developing countries, a better, more open trading system is essential if they are to extricate themselves from the morass of their debt and offer hope of renewed growth to their expanding populations. An open, strengthened and more comprehensive multilateral trade system is vital to the economic prospects of those inside blocs as well as those beyond the gates.

THE PACIFIC WAY — REGIONAL MEANS TO GLOBAL ENDS

H. Edward English

Introduction

Jan Tinbergen once asserted that we must use regional means to multilateral ends.[1] He was writing in the early 1960s just after regional cooperation in Europe had helped to achieve the restoration of European economies. However, the same outcome was realized in Japan without help from its neighbours. By far the largest external role in Japanese recovery was that of the United States, the occupying power and later principal market for Japanese exports. Bilateral aid (including relief from defence spending) and guidance in postwar reconstruction policy were the significant external ingredients in the spectacular post-war restoration of Japan.

Today we find again a world of uneven economic strengths arising from different degrees of development and from the failure of centralizing economic policies. This is especially true in Eastern Europe. Again there are responses at the bilateral aid level, at the regional level and through multilateral institutions. In Europe it seems likely that the main actions in restoring East European economies will come from the European Community, actions which can result in expanded regional solidarity.

In the Pacific is regional cooperation a promising means of achieving and maintaining economic prosperity? If so, it is apparent that such prosperity will be based on different foundations and different precepts than those dominant in Europe since the early 1950's.

Post-war Europe was driven to seek close political as well as economic ties to prevent any recurrence of the conflicts of the first half of this century. Economic growth and cooperation were seen as means of ensuring that radical regimes would not arise in Western Europe.

In 1990 recent events have disturbed post-war European institutions and the priorities of Europe 1992 have probably changed to accommodate the challenge and opportunity in East Europe. Will the members of the Community approach these tasks cooperatively or competitively?

Pacific region circumstances in the 1990s are very different to those in Europe. There is no disposition or perceived necessity for the sacrifice of political sovereignty; instead there is widespread acceptance of the benefits of economic interdependence and of policies

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[1] Jan Tinbergen, *Shaping the World Economy* (New York: Twentieth Century Fund, 1962), p. 184.

and even institutions that will guarantee the continuation of such benefits. Thus one might expect that Pacific economic cooperation would be based largely on economic impulses. The region is probably more vulnerable both to the varying instincts for economic cooperation and to non-economic factors governing political priorities.

The Consultative Economic Associations of the Pacific Region

The origins of economic cooperation in the Pacific region can be traced to the late 1960s when the private business and the intellectual communities perceived the implications of the spectacular growth of Japan as an economic power. Encouraged and even led by the Japanese themselves, new consultative economic associations emerged, notably the Pacific Basin Economic Council (PBEC) and the Pacific Trade and Development Conference (PAFTAD). The former continues as the most important business organization in the region. As it is completely privately financed, the higher income countries have been much more active than the less well-off countries. PBEC leaders also have played significant roles in the development of the Pacific Economic Cooperation Conference (PECC).

Economists from universities and research institutions have provided the leadership in PAFTAD. Most of those on the Steering Committee have had experience in privately-sponsored applied and policy research and/or in government. Significantly, those responsible for its creation were also very active in the initiatives that led to the founding of PECC. Saburo Okita, with the support of Japanese Foreign Minister Miki and Sir John Crawford, a leading Australian trade official and later Vice-Chancellor and Chancellor of Australian National University, played leading roles in the establishment of both PAFTAD in 1968 and PECC in 1980. In the latter year, Dr. Okita was Foreign Minister in the Ohira regime. He and Sir John provided the impetus to the decision by Prime Ministers Ohira and Fraser to hold a Pacific Community Seminar in Canberra in September, 1980. This seminar became the basis for the six subsequent PECC meetings in Bangkok (1982), Bali, (1983), Seoul (1985), Vancouver (1986), Osaka (1988) and Auckland (1989).

PECC brought government officials for the first time into Pacific institutional development on a basis similar to that of the earlier organizations. Specific task force activity, and the development in 1989 of an institutional format and secretariat were two main features of the subsequent evolution of PECC.

Since its third meeting in Bali (November, 1983) the PECC Standing Committee, made up of chairpersons of delegations to PECC began to develop study group or task force activity to examine priority issues in regional cooperation during the intervals between plenary meetings. The agendas of the first groups included trade policy, natural resources development (including agriculture, fisheries, minerals and energy), and investment. Since 1987 there has been an annual Pacific economic outlook activity, providing the basis for consensus-building on micro-economic matters. In addition, there are three new task forces, on telecommunications, transportation and tourism (known as the "Triple-T"), on science and technology, and on tropical forest cooperation. These new activities reflect the growing importance not only of issues affecting the transport of goods and tourists, more traditional categories, but also the vital role of trade in services and of networks through which

technology is transmitted and adapted. Some of these activities involve a more official focus, e.g. trade policy, agricultural and fisheries groups. Others have captured more attention from business sectors, e.g. minerals and energy, and the Triple-T, partly because of the large scale private investments that characterize these sectors. In all cases the work of these groups is under the guidance or "coordination" of the PECC Coordinating Group, mainly academic and research economists, many of whom have been involved in PAFTAD conferences. Reports and recommendations from these task forces form the basis of discussion at plenary meetings and statements by the Standing Committee broadly reflecting PECC policy views. For example, the Standing Committee has issued several statements on trade policy before and during the Uruguay Round of GATT negotiations.[2]

The evolution of institutional arrangements has been one of the highest priorities on the agenda of the PECC Standing Committee since 1987. As government officials now play a more active role in PECC, it has been argued that a more permanent institutional framework is required. The first step was the creation of a Central Fund to which all member committees agreed to contribute amounts varying with the relative size of the economies involved. A second step in 1989, established a permanent secretariat for PECC in Singapore. Its major tasks at the outset are to facilitate communications within PECC, relating to Standing Committee, task force and plenary meetings. It is also expected to focus on strengthening public relations, spreading the results of consensus-building efforts in the region and beyond.

Along with these developments, there have been efforts to strengthen the member (or national) committees in each participating country or region, the terms "member" and "region" being introduced to accommodate Taiwan and any other members whose political status is ambiguous. Member committees are typically appointed by each member government usually by the foreign minister, and, besides government officials, include businessmen and academics with particular interest and experience relating to the Pacific. Canada's committee includes both federal and provincial officials are included and also some federal legislators. These committees can and should play an increasing role in information dissemination and advice to government on policy and research priorities. Only very modest progress has been achieved to date.

The profile of Pacific intergovernmental cooperation increased further in early 1989 when Prime Minister Hawke of Australia proposed the establishment of a new ministerial forum in the region. This proposal was driven by concern over the prospects for the Uruguay Round negotiations, and a fear of deteriorating trade and other relations in the region, in part because of resort to unilateral or bilateral deals reflecting the interests and bargaining power of the larger economies. The invitation list at the outset was limited to Western Pacific countries — Japan, Korea, Australia, New Zealand and the ASEAN group. Canada and the United States were in limbo and China's position was uncertain, because it was unacceptable to Beijing for Taiwan to send a minister. Ultimately only 12 countries

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[2] The most recent appears along with many related papers in H.E. English ed., *Pacific Initiatives in Global Trade*, (Halifax: Institute for Research on Public Policy, 1990) pp. 7-10.

were represented. China and Taiwan were the only two members of PECC absent from the APEC (Asia Pacific Economic Cooperation) ministerial meeting. Several participants including those from the U.S., called for participation of China, Taiwan and Hong Kong in future meetings, the latter two on some special basis if it proved impossible for China to recognize their full membership.

The Future Membership of PECC and APEC

This leads to the more general issue, what about the future membership of other countries in the PECC or in APEC? The Pacific geographically includes at least 15 Pacific island states, plus Mexico, five Central America and four South American countries, the Soviet Union, North Korea, Vietnam, Laos and Cambodia. Of these, the Pacific island states already have a rather special status — they have accepted a kind of joint membership. As for the others the most persistent in seeking entry include Mexico, Peru, Chile, and the Soviet Union. Hong Kong as a separate customs territory is also eligible and in 1989 expressed a strong interest in PECC membership.

The major difficulty at present centres on the notion of Soviet participation. The USSR occupies four of the Kuril Islands, very close to the Northern shores of Japan's Hokkaido which Soviet military forces occupied during the last week of World War II. So far as Japan is concerned this situation is probably the only substantial barrier to acceptance of the Soviet Union in PECC.

The Latin American countries present a problem with their limited commitment to trans-Pacific trade. At its November 1989 meeting in Auckland, PECC heard eloquent pleas from Mexico and Hong Kong, thus raising the probability that at least these two will soon become members of PECC. So far as APEC is concerned, no other participants are likely to receive any consideration until the status of China, Taiwan and Hong Kong has been settled.

Current and Future Activities of PECC and APEC

The first APEC meeting, in Canberra on November 5-7, 1989, included ministers from 12 Pacific countries. Reports from that meeting indicated an "up beat" atmosphere.[3] Many participants thought it would be considered a success if they agreed to meet again. In fact they planned four future meetings, three for 1990, and outlined an agenda of common concerns to be addressed in these meetings. This includes:

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[3] See "Joint Statement", Ministerial-Level Meeting, November 5-7, 1989, Canberra, and the accompanying "Summary Statement by the Chairman", which appears as Appendix III in *Pacific Initiatives in Global Trade*, op. cit.

1. economic studies related to the work of the PECC Pacific Economic Outlook group, and efforts towards an improvement and harmonization of data bases related to trade and investment;

2. mechanisms for identification of projects related to cooperation in trade, investment and transfer of technology, and related aspects of human resources development; and

3. sectoral cooperation in infrastructure (e.g. telecommunications); in management of Pacific fisheries and tropical forest resources, in regional exchange of information on markets and policies in the minerals and energy sectors; and on environmental considerations to be addressed in these natural resources sectors especially.

PECC task forces are examining all of these sectors. Some will be addressed in APEC ministerials scheduled for 1990 (in Singapore) and 1991 (in Seoul).

The most immediate challenge which the APEC ministers accepted was to schedule two meetings of trade ministers from the APEC group for September and December 1990, to attempt a constructive contribution to a successful outcome of the Uruguay Round of GATT-sponsored negotiations. The first is scheduled for Vancouver, September 11-12. The second is being held in Brussels just before the final ministerial sessions of the Uruguay Round. Although it is unlikely that common positions will emerge on all the high priority trade issues of interest to Pacific countries, the effort will be worthwhile if the approach to the final stage of the negotiations heightens willingness to make substantial trade liberalization steps on such fundamental issues as agricultural policies, the multi-fibre arrangement and related bilateral non-tariff "voluntary" export restraints, intellectual property abuses and constraints and trade rules related to safeguards, subsidies and countervail, and dumping and antidumping practice.

The preparations for those ministerial meetings will be handled mainly by the Geneva-based trade officials of the APEC countries. At its meeting in Auckland on November 13-15, 1989, the Standing Committee of PECC stated its intention to assist the APEC ministers through its on-going task force and forum activities. In particular those responsible for planning the 1990 PECC Trade Policy Forum meeting (scheduled for August 1-3 in Kuala Lumpur, Malaysia) met informally with government officials participating in the Auckland meeting, and resolved to work closely with them so that the issues addressed at the Forum will be as relevant as possible to the APEC trade ministers' agenda for their September meeting. Thus there is an opportunity to link the work of PECC with that of the APEC group in a way that can provide the latter with the benefit of the interaction of trade policy specialists and practitioners from business sectors. At the same time the APEC group, through its willingness to focus issues for the PECC group, can develop its

international constituency for convergent Pacific trade policy positions reflecting the necessary give and take in a fruitful final stage in these negotiations.[4]

Pacific Economic Cooperation — The Future

The future of PECC, APEC and Pacific economic cooperation generally rests on political wisdom and will at the national level.

For some countries of the region, the problem is to focus on common cause in their dealings with the larger economic powers. For example, in ASEAN there is still tension between the will to strengthen sub-regional cooperation and commitment to make Pacific cooperation meaningful. Yet ASEAN countries have demonstrated in the past that they can cooperate effectively in their dealings with larger and richer partners. The facts of life are still the same: that less developed countries always trade much more with developed countries than among themselves. Only development itself will modify this fact. Such is the significance of demand in trade as an engine of growth.

For other countries, especially the larger powers, their challenge is to avoid the negative side of competition, the propensity to attribute the success of other developed countries and NIEs to unfair competition. All nations give in to some temptation to distort trade in their interest and then to rationalize their actions. It is particularly unfortunate that some who claim to speak for the United States still stereotype Japanese competition in ways that attempt to deny the well-documented case that the Japanese are successful mainly because they realize more of their productive potential than most European and North American economies. The strength of Pacific cooperation can be seriously damaged by the pursuit of comfortable myth. It will not be hurt by specific and rather quiet diplomacy well-buttressed by informed criticism of particular trading or investment restrictions or practices.

For Canada, the issues are somewhat simpler. They relate mainly to the extent to which Canadian businesses and governments are willing to devote resources of time and talent to the identification and development of Pacific opportunities. It is easy to argue that the country is small relative to the U.S. and Japan. It is less easy to defend the proposition that although Canada has the third largest GDP among participants in PECC and APEC, it devotes proportionately much less of its resources to the construction of a network of business and other intellectual links than many, probably most, of its regional partners.

The dynamism of the Pacific region is not some future hope or promise, like that of Eastern Europe. It is a present reality. Canada is not a presence in Europe like the members of the European Community. It should do what it can to support the positive trends of the region. Perhaps one of its contributions to this end might be to encourage

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[4] *Pacific Initiatives in Global Trade*, op. cit., includes papers on the issues underlined above.

the linkage of the new Soviet Union to Pacific cooperative initiatives, including natural resource and other developments in Siberia. Canada's partners in such enterprises might be Japan or Korea. This is but one way in which openness and diversity of the Pacific region can be exploited in the service of the newest of the global challenges.

EC SINGLE MARKET — EXTERNAL IMPLICATIONS

Jean-François Bence

Introduction

After a decade of Europessimism and ongoing problems in the implementation and the organization of the European Community, the European economic integration has been revitalized with the implementation of the Single European Act. This Act, endorsed by the European Council in March 1985 and put into force in mid-1987, has introduced some changes in the voting procedure,[1] enhanced the power of the European Parliament and expressed a strong commitment by Member States to complete the internal market. To this end, the European Commission, the EC's executive arm, was asked to draw up a detailed program with a specific timetable. In June 1985, the White Paper entitled "Completing the Internal Market" was issued and then endorsed by the Council. This document enumerates the measures that need to be taken or areas to be addressed for the Community to achieve its goal; it has also been specified that this program should be put into effect by the end of 1992.

The target of the 1992 program is wholesale elimination of the non-tariff barriers which still impede the free play of competition between different national components of the European market and maintain inefficient structures in the supply-side of the Community economy. These barriers are essentially of three types: physical, technical and fiscal. The total cost of these market barriers has been assessed as being in excess of ECU 200 billion (European Currency Units), an amount equal to around 5 per cent of the Community's GDP.

Although, the single market program was elaborated for internal reasons, its external implications are important. A fact which comes obviously from the European Community's position as the world's largest trading entity and from the stimulating effect of the 1992 program on the European economy[2] and consequently on the world economy. But it comes

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[1] The Act improved the Council voting procedure significantly by extending the use of weighted voting, a so-called qualified majority, to all issues related to the internal market except taxation, professional qualifications and the rights and interests of employees.

[2] The Commission has estimated the benefits from the completion of the single market to include an increase in the Community's GDP by a range of 4.5 per cent to 7 per cent, an increase in employment between 2 to 5 million jobs, a lowering of consumer prices in a range of 4.5 per cent to 6 per cent, a decrease in the public budgetary

also from the direct effects of the changes in the group's internal trade policy on exporters and foreign investors and from the required modifications of the European external trade policy at a moment of worldwide trade negotiations within the Uruguay Round of the GATT.

This paper will describe the external implications of the EC single market, particularly with respect to the European trade policy. Even though considerable uncertainties remain on the scope of the EC program's external impact, two sets of rules with respect to trade in goods and trade in services can be distinguished.

Trade in Goods

Under the Treaty of Rome of 1957 which established the European Common Market, the EC has eliminated all internal tariffs and erected a common external tariff. Its average weighted tariff on industrial goods is 4.5 per cent, about the same as that of the United States, and among the lowest within the GATT. The EC has developed a common trade policy, with regulations covering such areas as dumping, a system of trade preferences for developing countries and customs rules for goods entering the Community.

Theoretically, the Community has had jurisdiction over Community trade policy (Article 113) over the last 20 years. But, in reality, not only was Article 113 not explicit enough to prevent Member States from keeping a certain degree of liberty in the application of commercial measures against third countries but also Article 115 gave them an instrument to restrain intra-community trade. The result is a complex set of Community regulations and national rules which have created numerous and diverse non-tariff trade barriers.

Four main elements of the Community program could have potential effects on exporters and investors, either directly or through some modifications in the Community's external trade policy. These are:

- the abolition of border controls and the rules of origin
- the elimination of technical barriers
- the opening up of public procurements
- the Community trade instruments

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deficit by up to 2 per cent of GDP and an improvement in the Community's external balance by up to 1 per cent of GDP. Even though some of these forecasts appear to be overly optimistic, it is, however, quite clear that the completion of the internal market will provide more opportunities for growth within the Community.

Abolition of Border Controls and Rules of Origin

The 1985 White Paper proposes the elimination of barriers that restrict the movement of goods between Member States. Although the measures could be of benefit to non-EC firms involved in transporting goods across EC borders, the main beneficiaries would be European firms.

However, one area directly affecting imports that the EC will have to revise in connection with completion of the internal market is quantitative restrictions on imports from third countries. Despite a "common trade policy", individual states still impose quantitative restraints on direct imports from third countries, either through quotas or export restraint arrangements. In order to avoid trade deflection Member States can also ask the Commission to suspend the free circulation of third country goods (Article 115) if they are able to show that other EC members are adopting what they regard as an overly liberal attitude towards imports from third countries, and are then reexporting these imports within the Community. As mentioned by André Sapir:[3]

> In 1989, there were 20 product categories covered by the application of Article 115. Among these categories, 5 are particularly sensitive: textiles and clothing covered by the Multi-Fibre Arrangement, automobiles, footwear, consumer electronics and bananas.

After 1992, all these national restrictions will have to be removed with the creation of a single market because its implementation implies that intra-EC trade will no longer be subject to border controls.

In the short term, the Community could envisage the simple abolition of quotas for some products subject to Article 115 restrictions. But, this dramatic option could only be implemented for not-too sensitive items, such as handtools and umbrellas. For products of greater importance for the European economy, the problem is complex as any solution involves difficult negotiations among nation states and between the EC and foreigners.

The automotive industry provides the best example of the complexity of the issues and is of particular importance because any outcome in this sector is more likely to be regarded as a test for the opening of the single European market. At present, the motor car industries of the member countries are protected against Japanese competition by national actions, either voluntary export restraints (VERs) or quotas. Britain has had an arrangement limiting Japanese car imports to around 11 per cent of its market, France restricts such imports to 3 per cent and Italy, Spain and Portugal have set a low absolute maximum on Japanese car imports.

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[3] André Sapir, *Europe in the 1990's: Coping with Internal and External Economic Changes*, paper prepared for the Symposium on Canadian Federalism: Global Challenges, organized by The Institute for Research on Public Policy and The Institute of Intergovernmental Relations. (Auberge Mont Gabriel, March 1990) p. 3.

Although the Commission originally seemed to be in favour of a removal of national curbs in 1992, such an outcome is not likely because of the opposition of some Member States. As a matter of fact, the Commission, theoretically, has the power to enforce this policy, as most national restrictions require its legal approval. However, this could lead some EC countries to defy the EC regulations[4] and to jeopardize the implementation of the EC 1992 program. An alternative could be to adopt a Community-wide quantitative restraint agreement for a transitional period. This could take the form of a VER to be negotiated with the Japanese. But to negotiate a Community VER, the Commission needs the authorization of the Council and thus at least a qualified majority has to be found on the issue. As pointed out by Brian Hindley[5] in a recent article:

> The Commission's difficulty is that it cannot persuade that number to accept Community VERs per se — the Federal Republic of Germany, Britain, the Netherlands and Denmark typically oppose Community VERs and command enough votes in the Council to block them. Hence, solving EC trade problems through the negotiations of VERs (apart from textiles or steel) is not a route that is typically open to the Commission.

Such a statement may overestimate the political will of some Member States to support free trade, but it points out the necessity of a convergence among Member States. As a matter of fact, the main difficulties come from the technicalities of any agreement. For instance, the questions of the starting dates and the duration of the transition period are important. Similarly, the level of the EC-wide limits still need to be negotiated. Moreover, a system has to be defined in order to prevent dramatic increase in Japanese penetration of restricted markets without curtailing sales on traditionally open markets. But such an arrangement may be hard to achieve and would conflict directly with the EC's aim of eliminating all internal barriers to trade after 1992. A formal agreement on automotive products will be difficult to achieve. That may be the reason why the Commission seems to favour increasingly an unofficial understanding with the Japanese which will commit the latter to restrain their car sales in the Community and in individual Member States.

Any type of agreement will also have to deal with the sensitive question of Japanese car production in overseas factories. Countries with restricted markets, particularly France and Italy, fear that any restraint on Japanese car direct exports could be undermined by increasing deliveries from their assembly plants in the EC, North America or Eastern Europe. This leads us to the issue of rules of origin applied by the Community. The so-called rules of origin are used to define what is and is not an EC product or, if it is not

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[4] The dispute between the French government and the Commission on the write-off of the debt of the French car producer, Renault, shows that the implementation of the Commission's decisions is difficult when interests considered so vital are at stake.

[5] Brian Hindley, "Anti-Dumping Action: How the GATT is Threatened", in *Canada, The Pacific and Global Trade*, edited by Murray G. Smith (Halifax: Institute for Research on Public Policy, 1989) p. 130.

European, exactly where it comes from and under what kind of regulations it can be sold within the Community.

Currently, Article 5 of the Community Regulation 802 of 1968[6] defines a product's origin as where "the last substantial process or operation that is economically justified was performed — resulting in the manufacture of a new product or representing an important stage of manufacturing." Separate individual rules exist to denote origin of products that get preferential access from areas with special Community trade accords, such as the European Free Trade Association countries and Lomé Convention states. This general rule is quite similar to the internationally accepted rule (set out in the Kyoto Customs Convention in 1965) which states that origin is not determined by local content levels but rather by the location where "the last substantial process" is performed.

However, the last substantial process is now being seen by the Commission and other Europeans as too generous. As a matter of fact, the Europeans fear that mainly Japan and other Asian countries use these liberal rules of origin to avoid restrictive measures such as Community anti-dumping duties, tariffs and quotas, by increasing their investments in Europe. The same criteria can equally be used to confer third-country origin on goods made outside the EC. This applies when a foreign company wants to open a plant in a country other than its home base to avoid Community restrictions.

In recent years, new individual origin regulations, using the notion of local content, have been set for products that are unusually complicated or subject to individual national quotas (photocopiers, integrated circuits, VCRs). The fact that Brussels has proposed to apply different criteria for different products make countries outside the Community fear that the EC does not set fixed rules to keep the possibility of changing them arbitrarily and thus uses them as a non-tariff barrier to frustrate competitors. Moreover, if the EC decides to determine a new rule, the recent decision involving integrated circuits[7] suggests that Brussels might move toward defining origin as "the most substantial process" regardless of when it takes place.

The issue of national content is not only important for exports but even more so for foreign investment. The dispute between France, Italy and the United Kingdom over restrictions on imports of Nissan's Japanese car built in Britain and the recent GATT panel

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[6] Council Regulation No. 802/68 of 27 June 1968 pertains to the common definition of the concept of origin of goods, last amended by Regulation No. 3860/87 and in particular Article 14.

[7] Commission Regulation No. 288/89 of 3 February 1989 deals with determining the origin of integrated circuits. The Commission took the view that diffusion, i.e. the operation completing the intelligent contribution to the integrated circuits, is the operation which determines origin. Three major stages (assembly, testing and diffusion) were identified in the manufacture of integrated circuits and it was determined that the diffusion stage is the most sophisticated and difficult form the technical point of view and requires the largest research input.

report on EC's anti-dumping action against Japanese screwdriver assembly plants shows the sensitivity of the issue. Three important questions need to be answered before any agreement can be reached. First, at what level should local content requirement levels be set? Secondly, how should local content be measured (a "value-based system" or a "cost-based" system), and thirdly, whether there should be special demands for the local manufacturing of key model high value-added components?

Current international convention has it that local content requirements are a matter for the host or importing country. Moreover, as the GATT does not regulate rules of origin, the result has been a complexity of practices and an increasing use of rules of origin as an instrument of trade policy. It seems that there is an urgent need for new rules to be developed within the GATT in order to prevent what likely could be major trade conflicts.[8]

Elimination of Technical Barriers

According to the Cecchini report,[9] technical barriers (i.e. technical standards or regulations and certification procedures) constitute the most important obstacle to intra-Community trade. In this area, the Commission has adopted a new policy, as determined in the White Paper and subsequently approved by the Council.

Before 1985 and the adoption of a new approach to standards and technical regulations, the European Community tried to reduce technical barriers to trade by means of harmonization measures, in the form of directives aimed at the adoption of similar technical rules applicable in all Member States. On the basis of Article 100 of the Treaty of Rome, these directives needed to be approved unanimously by the Member States and then be incorporated in national laws within a specified time limit. In nearly all sectors, this approach proved to be inefficient. This is why, by a Resolution dated 7 May 1985, the Council decided to adopt a new approach.

This new approach to standards and regulations abandons attempts to draft detailed harmonization procedures in favour of more flexible rules. During the first period, harmonization at the EC level will be limited to the adoption, by virtue of directives based on Article 110A of the Single European Act, of essential requirements for safety, health and other requirements for the common good. It is worth being noted that the Single European Act allows the adoption of such Community legislation by a qualified majority, rather than unanimity, of Member States. With the exception of these essential requirements, Member

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[8] The prospect of reaching an agreement on rules of origin within the Uruguay Round of the GATT recently increased when the EC accepted that general principles governing rules of origin should be laid down in the Uruguay Round multilateral trade talks under the GATT.

[9] Paolo Cecchini with Michel Catinat and Alexis Jacquemin, *The European Challenge 1992 — The Benefits of a Single Market*, Aldershot (United Kingdom): Wildwood House, 1988.

States' own standards will be subject to mutual recognition by authorities of the other EC members. This principle of mutual recognition, which derives from a 1979 decision of the European Court of Justice in the "Cassis of Dijon" case, means that a product lawfully marketed in one member state must be admitted to the markets of the other EC members. At the same time, European standard bodies (CEN and Cenelec)[10] as soon as possible, will develop European-wide standards to the maximum extent.

The complete harmonization of standards at the European level might take a great deal of time because of the complexity of the problems involved. But whatever the speed of harmonization will be, suppliers from third countries will benefit from the elimination of technical barriers within the Community and will be provided with new market opportunities. In contrast to the present situation where exporters have to meet different standards depending on which country they want access, harmonization, or mutual recognition in the transition period, will make things a lot easier. But there remain four major uncertainties before being able to assess the reality of the elimination of these non-tariff trade barriers. First, the European Community could adopt strict essential requirements related to health and safety which might affect third country producers and especially developing countries. Second, the EC could also introduce technical standards for high-tech products in order to exclude, at least temporarily, foreign competitors and to give time for its own industry to become competitive. Third, it is not clear yet whether the principle of mutual recognition applied to indirect imports will be extended to direct imports. Fourth, the issue of testing and certification is of particular importance. The Commission has accepted in principle that foreign laboratories will certify the Euro-worthiness of their exports but this could take many years to achieve such a goal. For the Community to recognize testing and certification done in third countries, there will need to be a mutual recognition of a certification and testing agreement completed between these countries and the Commission. Even though many uncertainties remain as to what such an agreement should contain, two elements appear likely. First, the Commission would want to be sure that testing and certification bodies in non-EC countries were competent and were appropriately accredited by a national accreditation system. Second, there would be a requirement for reciprocity, meaning that European-certification bodies should also be able to test and certify conformity to third countries' standards.

The Opening Up of Public Procurements and Public Works

The importance of purchases by public administrations varies between 10 and 20 per cent of GDP in the 12 Member States. Despite two existing directives, dated from 1971 and 1977, on the opening up of public works and public supply contracts, statistics show that fewer than 5 per cent of all central, regional and local public orders go to bidders from other countries, and many are awarded on a non-competitive single tender basis. As a matter of fact, the most serious and frequent infringements of EC procurement regulations have been identified as being the following: failure to publish invitations to tender, misuse

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[10] CEN: European Committee for Standardization; Cenelec: European Committee for Electrotechnical Standardization

of exceptional bid award procedures, bid conditions incompatible with legislation, unlawful exclusion of tenders, discrimination in the evaluation of tenderers and discrimination in tender awards.

In order to reduce these barriers which result in massive inefficiencies inside the Community, the Commission has made the opening up of public procurements one of the priorities of its program. To this end two major directives have been adopted to amend the 1971 and 1977 directives.[11]

Basically the directives on public supply and public works aim to increase the transparency of tendering procedures via longer notification periods as well as increased publication requirements. They also extend EC legislation to include activities such as leasing. Situations where only one company is asked to tender will be strictly limited.

Another major target of the reform of public award contracts is to toughen provisions for sanctions and enforcement. The current procedures for taking offenders to the European Court are slow and cumbersome and in the absence or inadequacy of effective administrative or judicial remedies, the opening up of public contracts could remain only theoretical. To improve this important aspect, the EC has agreed in principle on a proposed "remedies" directive[12] while the Commission is setting up its own enforcement unit. Under the new rules, countries would set up their own systems to monitor compliance and review infringements. They would have the power to correct violations, to set aside unlawful decisions and to award damages, subject to judicial review. The Commission would also be entitled to require countries to explain or correct infringements within 21 days.

Changes in EC regulation are intended to open public contracts more effectively to all firms established in the Community. For sectors covered by GATT rules on public contracts, European subsidiaries of third country firms will have, throughout the Community, the same access to government purchases and contracts as European companies. As things stand in Community law, third country firms which establish their subsidiaries in any Community country are considered as Community undertakings as of the moment of their incorporation (Article 58 of the Treaty of Rome) and therefore may benefit from the right of establishment and the free provision of services and goods within its territory. Suppliers from outside the Community will continue to be governed by the GATT code on Government Procurement. Signatories to the code have agreed to provide mutual non-discriminatory access to public procurement markets in specified sectors.

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[11] Council Directive No. 88/295 of 22 March 1988 amends Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and repeals certain provisions of Directive 80/767/EEC; Council Directive No. 89/440 of 18 July 1989 amends Directive 71/305/EEC concerning coordination of procedures for the award of public works contracts.

[12] There is a proposal for a Council Directive coordinating the laws, regulations and administrative provisions relating to the application of Community rules on procedures for the award of public supply and public works contracts.

Even though the Commission has shown its willingness to open public contracts more broadly to intra-Community competition and has adopted new provisions to enforce its directives, the success of this policy is not yet assured. A lot will depend on the behaviour of business and national administrations. Will businessmen be willing to bid for public orders outside their own country? And will national administrations really implement the full scope of these new directives when they already failed to implement the 1971 and 1977 directives? As a matter of fact, effective enforcement will depend on how often aggrieved bidders will denounce illegal award practices.

In addition, the Commission has tabled proposals to liberalize four sectors not covered by GATT rules nor by EC directives: water, transport, energy and telecommunications.[13] These sectors represent the heartland of monopoly purchasing and are responsible for half of all EC public procurements. They have been exempted from EC rules until now because of the difficulty of devising a system to cover private as well as publicly-owned enterprises. Many aspects (coverage, thresholds, standards and enforcement) need still to be clarified. In these sectors, contracting entities are placed under no obligation to apply the provisions to an offer unless a substantial part of its value, more than half, represents economic activity within Member States. Furthermore, it is also proposed that purchasers will be obliged to award contracts to EC suppliers if their prices were up to 3 per cent higher than equivalent bids from non-EC competitors. However, the directive also provides a specific mechanism for arrangements for equal market access to be made between the Community and third states, if such negotiations produce positive results.

Community Trade Instruments

The Community's various trade instruments, principally the safeguard clause and the anti-dumping rules will take on much more importance in the absence of Article 115 protection.

Article XIX of the GATT permits governments to escape their GATT obligations temporarily, for example by delaying or suspending tariff reductions which have been negotiated in a trade agreement or by imposing quantitative controls, to safeguard any of their producers seriously injured by a surge in imports. The article also ensures that foreign suppliers may retaliate or be compensated for losses from the restricted market access. Because there is a lot of dissatisfaction with the safeguard clause of the GATT in its current form,[14] Article XIX has been largely bypassed by the use of "grey-area" restrictive measures in important sections of trade in ships, automobiles, steel and other products.

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[13] Proposal No. 378/88 of 11 October 1988, covers the opening up of public procurements in the energy, water and transport services and proposal No. 378/88 of 11 October 1988, deals with the opening up of public procurements in the telecommunications sector.

[14] See Gary Sampson, "Safeguards", in *The Uruguay Round — A Handbook for the Multilateral Trade Negotiations*, J. Michael Finger and Andrzej Olechowski, eds., (World Bank, Washington, D.C., 1987) pp. 143-152.

Attempts to reform Article XIX during the Tokyo Round negotiations were not successful. Although there was a consensus on the need to clarify and strengthen the rules that govern the use of safeguard import measures, long standing differences on whether safeguard measures should be global in their application or might be applied on a selective basis to exporting countries were not resolved. As the safeguard clause is back on the negotiating agenda of the Uruguay Round, the Achilles heel of the negotiations is still the issue of selectivity. As during the previous round of multilateral trade negotiations, the EC is seeking to legitimize the use in GATT of the application of selective restraints against disruptive exports. If the EC succeeds in achieving this change, it will ease its task of phasing out national import quotas affecting trade between its members and the rest of the world.

The unfair trade practice that accounts for most activity by the EC is dumping. Under the traditional definition, dumping occurs when goods are sold abroad for a lower price that the exporter charges for the same goods in its home market. Article VI of the GATT authorizes the imposition of anti-dumping duties on dumped exports. The maximum amount of such a duty is the "margin of dumping" — that is the difference between the price at which the goods are sold in the home market of the exporter ("normal value" or "reference price") and the price of the goods when exported.

The dumping instrument is one of the Community's most effective weapons of commercial/industrial policy. The day-to-day administration of the anti-dumping laws is handled by the Commission which receives complaints, initiates investigations, imposes provisional duties, accepts undertakings and proposes definitive duties. The final decision in the anti-dumping proceedings is vested in the Council. Recent reinforcement of dumping rules[15] and the EC's more aggressive use of anti-dumping policy[16] have caused growing concerns outside the Community.

Mainly two technical biases of the EC anti-dumping policy come under criticism. First, the method of calculation used by the Commission makes the discovery of dumping very probable. Second, the EC practices with regards to refund of anti-dumping duties are designed in such a way that requirements for refund will be met rarely.[17] Moreover, the

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[15] Council Regulation No. 2423/88 of 11 July 1988 covers protection against dumped or subsidized imports from countries not members of the European Economic Community.

[16] From 1980 to 1988, the EC initiated 357 anti-dumping investigations. Of the 56 goods currently subject to EC dumping duties, 9 are electronic products, mainly from Japan.

[17] See Brian Hindley, op. cit. p. 4.

introduction of anti-circumvention measures in 1987,[18] in order to allow the imposition of anti-dumping duties on products assembled within the Community from imported parts or materials, has also been a source of conflict with the countries most subject to EC anti-dumping policy, namely Japan and other Asian countries. Recently, a GATT panel declared that the duties imposed on Japanese electronic typewriters and other products assembled in the EC were inconsistent with GATT rules.[19] But, the panel did not give any indication as to how the problem of circumventing anti-dumping duties should be dealt with in respect to international trade rules.

Obviously, this recent decision weakens the EC anti-dumping policy. However, the effect of the GATT panel should not be overestimated as it was only dealing with one aspect of the policy. One positive aspect of this decision is that it could provide an additional incentive to solve the broader controversy over anti-dumping within the Uruguay Round. This could be done through a reform of the GATT's separate anti-dumping code[20] which will provide not only a way to deal with anti-circumvention but also explicit rules on how dumping margins should be calculated.[21]

Trade in Services

Although services account for a major share of world trade, they are subject to little, if any, international trade regulation. In fact for the first time, services are on the agenda of the multilateral trade negotiations currently taking place.

The service sector is a major part of the EC 1992 program. In fact, the Commission views the service sector as critical because of its steady growth and future importance in the EC economy. In its paragraph 95, the White Paper states:

> it is no exaggeration to see the establishment of a common market in services as one of the main preconditions for a return of economic prosperity.

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[18] Anti-circumvention measures were introduced in an amendment (Council Regulation No. 1761/87 of 22 June 1987) to the basic anti-dumping laws of 1984. Anti-circumvention measures are still included in the new EC regulation on anti-dumping.

[19] The panel also decided that the undertaking the EC has forced on Japanese companies to ensure that at least 40 per cent of parts used in assembled products should come from outside the exporting country was illegal under GATT.

[20] Even though two dozen countries have subscribed to the GATT's anti-dumping code, these countries account for a major share of world trade.

[21] The current GATT's dumping code has no specific rules on how dumping margins should be calculated.

Much of the Commission's attention has been focused on the most regulated services, and particularly the financial services which account for 7 per cent of EC gross domestic product. In this field, the second banking directive[22] is the keystone of the EC's program.

This directive introduces the concept of a single licence which will enable all credit institutions duly authorized in their home country to establish or supply services throughout the Community without further authorization. The supervisory control will be the responsibility of the home Member State. However, to ensure that all who hold licences are suitably qualified and supervised, there are further provisions in the directive and in other measures for harmonization of essential rules.[23] The licence covers an agreed list of activities which includes both commercial banking operations (deposit taking and lending, money transmission and foreign exchange), investment banking activities (securities trading underwriting, fund management) and also the provision of financial advice.

The single licence would be available to all banking institutions, whether European or foreign based. The latter would have to be established within the EC through a local subsidiary,[24] not just a branch. Unlike the current system where foreign banks have to meet regulatory requirements of various Member States, once the various requests outlined in the directive are fulfilled, foreign banks will receive an establishment authorization in one Member State which would be recognized automatically by other EC countries. Obviously, this change provides large opportunities for foreign banks to expand and rationalize their operations inside the Community.

Before the adoption of the second directive, the main contentious issue regarding the EC financial services policy was the interpretation of the notion of reciprocity. As the EC was far from clear on the subject, the debate turned on the nature of the reciprocity that it would have to apply to trading partners wanting access to its markets.[25] When looking at

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[22] Second Council Directive No. 89/646 of 15 December 1989 is on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC.

[23] These essential rules include the establishment of a required level of initial capital, supervision of the major shareholders of credit institutions, limitation of the size of participation in non-financial undertakings and harmonization of the solvency ratio.

[24] As things stand in Community law, third country banks which establish their subsidiaries in any Community country are considered as Community undertakings as of the moment of their incorporation (Article 58 of the Treaty of Rome) and therefore may benefit from the right of establishment and the free provision of services within its territory. However, the branches of third country credit institutions do not benefit from these rights.

[25] Under the worst case scenario, the fear was that the Commission would seek to apply reciprocity retroactively to foreign firms already in the EC. It would have demanded opportunities for its firms in foreign markets identical to those available

the December 1989 directive, it appears that the concept of reciprocity will not be applied retroactively. Moreover, the EC is no longer looking for "mirror image reciprocity." But the move toward the principle of national treatment is not total as the directive still includes a provision for the Commission to negotiate "equal access."[26]

The question of banking has received a lot of attention, not only because of its importance but also because it is considered a landmark case in the application of the notion of reciprocity by the European Community. This relatively mild interpretation of reciprocity has assuaged most of the third country concerns. However, the EC keeps at its disposal the threat of reciprocal treatment to force some third countries to open their markets in this traditionally regulated sector and also, to use it as a bargaining tool in the Uruguay Round of multilateral trade negotiations.

In the insurance sector, the EC has made and will make a series of proposals to achieve the single European insurance market. The aim, as for banks, is to allow insurance companies to provide their services in the Community on the basis of a single authorization. In 1988, the Council adopted a directive that established the freedom to provide services in the non-life sector.[27] In this field, it should be noted that the Commission has been careful to make a clear distinction between insurance for large corporate customers ("large risks") and between that for individuals ("mass risks"). In the case of mass risks, the directive introduces for the first time home country prudential control, meaning that the rules governing an insurance contract will be those in the insurer's home country. For mass risks, the Commission has retained additional protection. Insurance companies, which want to service such customers, will have the right to establish themselves in other Member States but they will have to respect the rules in force in the host country, i.e. the country where the risk is located.

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in Europe and such demands would have been automatic and based on a case-by-case assessment.

[26] Article 9 of the 15 December 1989 second directive, op. cit., requires the Commission to report on how accessible third countries are for EC banks. Whenever it appears to the Commission that Community credit institutions in a third country do not receive national treatment, the Commission may initiate negotiations in order to remedy the situation. Moreover, the EC may, at any time, take retaliatory measures, such as suspending or delaying request for authorization. Furthermore, the Article says that the Commission may submit proposals to the Council to get the mandate to negotiate the same access for EC banks in third countries as third country banks enjoy in the EC.

[27] Second Council Directive No. 88/357 of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and laying down provisions to facilitate the effective exercise of freedom to provide services amends Directive 73/239/EEC.

In the life insurance field, the Commission has followed the same approach in its proposals for establishing the freedom to provide services.[28] Life insurers would be allowed to sell policies to residents of Member States where they are not established, but this should be the result of the buyer's own initiative. Insurance companies will not be allowed to actively solicit cross-border sales.

There remains much to be done for the Community to establish a single insurance market. As a matter of fact, the Commission is already planning to table in the next months a third Coordination Directive, both in the life and non-life insurance sectors. As will probably be the case in other service industries, the notion of reciprocity which will be adopted in the insurance sector is more likely to reflect the directive which will be implemented in the banking sector.

In other service industries, such as transportation and telecommunications, the Commission's single market program is also taking shape with directives introducing more competition in markets for telecommunications terminal equipment and value-added services, and directives liberalizing the air transport market. But the transportation sector also provides an example of what some call the European protectionist attitude. The European Commission recently decided to impose a countervailing duty[29] on a South Korean shipping line, Hyundai Merchant Marine, which was carrying goods in liner service between the EC and Australia. This was the first time that the Community charged duty on unfair under-pricing in any service industry and it was the first use of a more than two-year-old rule against artificial price undercutting in the shipping industry[30]

Conclusion

Over the last few years, the perception of Europe has changed radically from that of a declining continent to a dynamic and promising area of growth. Although the dramatic events in Eastern Europe have recently captured the attention of the world, the EC 1992 program and its potential effects are mainly responsible for this phenomenon.

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[28] There is a proposal for a Second Council Directive on the coordination of laws, regulation and administrative provisions relating to direct life insurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC.

[29] Council Regulation No. 15/89 of 4 January 1989. These duties were fixed at 450ECUs per 20ft container, 900ECUs per 40ft container and prorated for containers of any other size, whatever the goods shipped. Hyundai stated that duties of 450 ECUs per 20ft container amounted to an increase of 37.4 per cent in shipping costs.

[30] Council Regulation No. 4057/86 of 22 December 1986 is on unfair pricing practices in maritime transport.

There has been a great deal of unnecessary hysteria in non-European discussions of Fortress Europe and how damaging the single European market will be for the world trading system. Although there remain considerable uncertainties as to the external implications of the EC program, it seems, however, that the Community, on balance, will be more open to outside competition than it was before and on some aspects will have more generous rules than those of most major industrial countries. The abolition of border controls, elimination of technical barriers, opening up of public procurements and new regulations on services will create opportunities not only for member country firms but also for non-EC firms. Furthermore, it should be noted that, in the most regulated sectors, the completion of the single market is accompanied by a movement toward deregulation which also provides greater opportunities for business.

However, as pointed out earlier in this paper the Community keeps at its disposal some devices which could be used to restrain competition from third countries and to respond to protectionist pressures coming from painful internal economic adjustments. For instance, some aspects of the harmonization of standards could be used to keep a certain level of protection and the modalities for the removal of quantitative restraints in the automotive sector remain uncertain. Moreover, the EC anti-dumping policy, as currently applied, is a powerful trade policy instrument which so far has been mainly used against Asian exporters, particularly Japanese and South Korean. Similarly, with regards to trade in services, the Community has kept some flexibility in its interpretation of the notion of reciprocity and intends to use this flexibility as a negotiating lever within the Uruguay Round.

In many areas, the Uruguay Round agenda and that of the EC internal agenda overlap. Both agendas cover standards, public procurements, import quotas, anti-dumping, rules of origin, subsidies and service sector liberalization. As the Round is approaching its deadline and is moving towards detailed negotiations on specific trade issues, it is evident that, on some aspects, the Uruguay Round will have a significant impact on the EC program and the EC/GATT position will be influenced by the implementation of the single market. Success of the Uruguay Round negotiations both will enable the Community to use its own liberalization program to obtain greater liberalization on a world scale and will help the EC to withstand internal protectionist pressures. But if the Uruguay Round negotiations were to fail, the prospects of "Euro-regionalism" and the formation of a trade block could increase, particularly with the current negotiations on the formation of a "European Economic Space" with members of the European Free Trade Association and the emerging links with the Eastern European countries.

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